

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

DeANDRE DAMPIER

PETITIONER

VS.

CIVIL ACTION NO. 3:08-cv-310-WHB-LRA

WALTER TRIPP

RESPONDENT

OPINION AND ORDER

This cause is before the Court on the Report and Recommendation of United States Magistrate Judge Linda R. Anderson. After considering the Report and Recommendation¹ and the other pleadings in this case, the Court finds the Report and Recommendation should be adopted as the finding of this Court.

I. Discussion

On May 16, 2008, Petitioner, DeAndre Dampier ("Dampier"), filed a Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus by a Person in State Custody ("2254 Petition").² On July 8, 2009, on Defendant's Motion to Dismiss, Judge Anderson reviewed Dampier's 2254 Petition and found that he had failed to set forth any grounds upon which habeas relief could be granted. Judge Anderson then

¹ The parties were required to file objections to Judge Anderson's Report and Recommendation on or before August 13, 2009. No objections were filed.

² As Dampier is proceeding in this case *pro se*, the allegations in his pleadings have been liberally construed. See United States v. Wilkes, 20 F.3d 651, 653 (5th Cir. 1994).

entered an Order by which Dampier was granted additional time in which to amend his 2254 Petition "to set forth the grounds and supporting facts for which he claims he is entitled to federal habeas relief." See Order Granting Time to Amend [Docket No. 11], at 2. By this same Order, Dampier was expressly warned that the failure to amend his 2254 Petition would "result in the dismissal of his habeas petition without further notice" to him. Id. Upon Dampier's failure to amend his 2254 Petition, Judge Anderson entered a Report and Recommendation ("R & R") recommending that the Petition be dismissed for failure to state a claim upon which relief could be granted. See R & R [Docket No. 12].

After reviewing the R & R and Dampier's 2254 Petition, the Court agrees that the 2254 Petition does not state a claim upon which relief may be granted and, therefore, that this case should be dismissed, without prejudice, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, the Court will adopt Judge Anderson's R & R recommending dismissal of this case without prejudice.

For the foregoing reasons:

IT IS THEREFORE ORDERED that the July 30, 2009, Report and Recommendation of United States Magistrate Judge Linda R. Anderson [Docket No. 12], which recommends dismissal of this case without prejudice for failure to state a claim upon which relief may be granted, is hereby adopted as the finding of this Court.

IT IS FURTHER ORDERED that the Motion of Defendant to Dismiss for Failure to State a Claim Upon Which Relief can be Granted [Docket No. 10] is hereby granted.

A Final Judgment dismissing this case without prejudice shall be entered this day.

SO ORDERED this the 31st day of August, 2009.

s/ William H. Barbour, Jr.
UNITED STATES DISTRICT JUDGE